(2015) 11 KAR CK 0221

Karnataka High Court

Case No: Criminal Appeal No. 161/2012

N.M. Threethegowda	APPELLANT
Vs	
A. Abdul Refekh	RESPONDENT

Date of Decision: Nov. 2, 2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) - Section 2(d)#Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2015) 11 KAR CK 0221

Hon'ble Judges: A.V. Chandrashekara, J.

Bench: Single Bench

Advocate: Rashmi Patel, Adv. for R. Nataraj, Advocate, for the Appellant; R. Srinivas, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.V. Chandrashekara, J.
Matter is at the stage of admission. Smt. Rashmi Patel, learned Advocate for R. Nataraj who is present in the

Court submits that they have already given NOC Vakalath to the complainant-appellant. But no arrangement is made by the appellant to represent

him in this appeal. Heard Sri. R. Srinivas, the learned Advocate for the accused-respondent and perused the records.

2. By the impugned Judgment dated 29.10.2011 passed by the XIII Additional Chief Metropolitan Magistrate, Bengaluru, in C.C. No.

19222/2009, the accused-respondent herein has been acquitted for the offence punishable under Section-138 of the Negotiable Instrument Act.

Assailing the said judgment of acquittal, the complainant has preferred the present appeal.

3. The appellant herein was the complainant in a complaint filed in terms of Section-2(d) of the Code of Criminal Procedure for the offence

punishable under Section-138 of the Negotiable Instrument Act. According to the complainant, a sum of Rs. 1,00,000/- (rupees one lakh) had

been given in cash to the respondent-accused for development of the properties situated in Survey Nos. 55, 59, 87, 142, 143 & 148 of

Kudurugere and Tarahunase villages and in turn, accused-respondent had issued a cheque dated 20.09.2008 bearing No. 044876 drawn on

Canara bank, in favour of the appellant. In spite of several demands, the accused did not repay the said amount and as such, the complainant has

presented the said cheque for encashment and the same was returned with an endorsement ""funds insufficient/account closed"". A statutory notice

was issued in terms of Section-138 of the N.I. Act, calling upon the accused-respondent to repay the cheque amount. The respondent issued reply

notice by taking untenable grounds and as he failed to repay the said amount, a complaint was filed in terms of Section-2(d) of Cr.P.C., for the

offence punishable under Section-138 of the N.I. Act.

4. After taking cognizance, summons were issued to the respondent-accused. In order to bring home the guilt of the accused, the complainant

examined himself as P.W. 1 and got marked 38 exhibits. The accused examined himself as D.W. 1 and got marked 10 exhibits.

5. It is the case of the accused that the there was no relationship of debtor and creditor between the complainant and accused and that the entire

case of the complainant was an improved version.

6. After evaluating the oral and documentary evidence adduced by the respective parties, the learned Judge of the trial court has come to the

conclusion that the complainant has failed to prove that the cheque in question was issued by the accused for legally recoverable debt of Rs.

1,00,000/- and that there was no relationship of debtor and creditor between the complainant and accused and consequently, acquitted the

accused-respondent herein for the offence punishable under Section-138 of the N.I. Act.

7. As could be seen from the reasonings assigned in paragraph-15 of the impugned Judgment, the learned judge of the trial Court, while acquitting

the accused-respondent has discussed the entire case elaborately, in the light of the oral and documentary evidence adduced by the respective

parties.

8. During the course of evidence, the complainant tried to substantially improve his case on the ground that Banashankari Leasing Company had

advanced Rs. 20,00,00,000/- to him and from out of the said amount a sum of Rs. 1,00,000/- was handed over to the accused by way of cash.

The complainant has relied on tri-partite agreement stated to have been entered into between Banashankari Leasing Company, himself and the

accused, as per Ex. P.13. The learned Judge has categorically recorded a finding that the presumption available U/S. 138 of the N.I. Act is

rebuttable one and the accused has placed sufficient material to rebut the same. No witnesses or its officials of Banashankari Leasing Company

were examined to prove that the said leasing company had indeed released a sum of Rs. 20,00,00,000/- in the joint names of the complainant as

well as the accused for investment, as alleged by the complainant. The learned Judge has observed that if really the said amount had been released

in the joint names, then both the complainant as well as the accused are indebted to the said leasing company. Furthermore, the said leasing

company has not taken any action against the accused or the complaint. Further, despite searching cross-examination of D.W.. 1 by the counsel

for the complainant, nothing contra has been elicited in the mouth of D.W. 1 to substantiate that Banashankari Leasing Company had indeed

advanced the funds for investment with the accused. It is in this view of the matter, the trial Court has specifically held that there was no relationship

of debtor and creditor between the complainant and the accused, so as to draw presumption available U/S. 138 of the N.I. Act. The presumption

available U/S. 138 has stood rebutted effectively.

9. The learned trial judge, after evaluating the oral and documentary evidence in a proper perspective, has come to the conclusion that the

complainant has failed to prove that the accused was due to him and the cheque in question was issued towards the discharge of the legally

recoverable debt. On perusal of materials on record, this Court does not find any illegality or perversity or error apparent on the face of the record

in the findings recorded by the learned trial judge, while acquitting the accused-respondent. No good grounds are made out to interfere with such

finding of the trial court. The Trial Court has adopted right approach to the real state of affairs.

Hence, question of granting special leave does not arise. Accordingly, the criminal appeal filed by the complainant-appellant is dismissed as unfit

for admission.